

FOIL Request -- COVID-19 Records related to NYC Wastewater Testing

From: Progress New York <contact@progressnewyork.news>
To: recordsaccess@health.nyc.gov <recordsaccess@health.nyc.gov>
CC: Progress New York <contact@progressnewyork.news>
Date: Thursday, December 2nd, 2021 at 6:20 PM

Ladies and Gentlemen :

This is a request ("Request") pursuant to the Freedom of Information Law ("FOIL"). NY Pub Off L § 87. FOIL was enacted to improve Government transparency, and this Request seeks to inform the public about records about the City of New York's response to the COVID-19 pandemic. Without this information, the public would be unable to make informed decisions about the Government's work to protect public health during this deadly pandemic. I make the following requests for records in hopes of filling that void.

An Overview of the Description of Records. This Request seeks records in the possession of the New York City Department of Health and Mental Hygiene about the City's "monitoring techniques to look for SARS-CoV-2 in wastewater." The information the City of New York has published about this program contradicts press reports. The City claims that this program has been conducted since at least Spring 2021 by the New York City Department of Environmental Protection. See <https://www1.nyc.gov/site/dep/whats-new/covid-19-wastewater-testing.page> (noting that, "Since the spring, DEP's Bureau of Wastewater Treatment (BWT) has been implementing monitoring techniques to look for SARS-CoV-2 in wastewater."). According to a press report, the COVID-19 monitoring and testing of wastewater reaches back to 2020. See Jacob Geanous and Derek Kravitz, *Researchers Find Signs of COVID-19 Mutations in NYC Sewage, Pointing to Possible Dog and Rat Infections*, The City (29 July 2021), <https://www.thecity.nyc/2021/7/29/22600656/covid-mutations-in-new-york-city-sewage-possible-dog-rat> (noting that, "Since last year, New York City has been testing sewage for signs of COVID-19.").

According to the New York City Department of Environmental Protection, this program has been conducted "in partnership" with the New York City Department of Health and Mental Hygiene and informs the "City's COVID-19 response." As a result, this Request is for records in the possession of the New York City Department of Health and Mental Hygiene.

The Requested Records :

- 1/. All records about the environmental and health monitoring of wastewater collected in New York City for analysis of the presence of the Coronavirus, also known as SARS-CoV-2, and any other virus or viral parts that can lead to the spread of COVID-19 ;
- 2/. All records about how the environmental and health monitoring of wastewater collected in New York City informs the City's COVID-19 response ;
- 3/. All Coronavirus variant sequencing reports generated from the environmental and health monitoring of wastewater collected in New York City ; and
- 4/. All reports, memoranda, recommendations, summaries, advisories, presentations, bulletins, and written advice prepared by the New York City Department of Health and Mental Hygiene that informs the City's COVID-19 response.

Application For Expedited Processing. I request expedited processing of this Request. There is a "compelling need" for these records, because the information requested is urgently needed in order to be disseminated to inform the public about the success of FOIL in making records available to the public. In addition, the records sought relate to a "breaking news story of general public interest." I am a reporter for the news Web site, Progress New York. As a result, I am "primarily engaged in disseminating information." Furthermore, because the Requested Records have already been the subject of press reports, there is no more exemption available to New York City Government or the New York City Department of Health and Mental Hygiene. As a result, the Requested Records should be immediately released. No extensions of time will be granted that prevent the timely release of the Requested Records. You have five business days to respond to this FOIL Request. NY Pub Off L § 89(3)(a).

Application for Waiver of Fees. I request a waiver of search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest, because it "is likely to contribute significantly to public understanding of operations or activities of the [G]overnment and is not primarily in the commercial interest of the requester." I also request a waiver of search and review fees on the grounds that I qualify as a "representative of the news media," and the records and information are not sought for commercial use. I meet the statutory and regulatory definitions of a "representative of the news media" because I function as an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii). To save money on duplication costs and to further my request for a waiver of fees, I would be happy to receive electronic/digital records.

I affirm that the information provided supporting the request for expedited processing and waiver of fees is true and correct to the best of my knowledge and belief.

If you have any questions, please do not hesitate to contact me.

Thank you kindly,
-- Louis

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